IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO. 14 OF 1990

Special Land Acquisition Officer No.3
Bombay and Bombay Sub-urban District
Old Custom House Yard, Fort, Bombay
Vs
1. M/s.Patel Engineering Co. Ltd.
Near Patel Estate Road
S.V. Road, Jogeshwari (W)
Mumbai 400 102.

2. Mr. R.R. Upadhya ...Claimants

And

Bombay Telephone
Telephone Exchange Bldg. Mumbai ...Acquiring Body

Mr. M.G. Sawant for SLAO
Mr. Rajguru for Acquring Body
Mr. Chandran along with Mr. Mannadiar
i/b. M/s. Mannadiar & Co. for claimants.

CORAM : SMT. ROSHAN DALVI, J.
DATED : 17TH JANUARY, 2007

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. This LAR is made by the Special Land Acquisition

Officer, 3 (SLAO) in respect of the acquisition of CTS No.220/12.21 and 28 of Village Bandvali, Tal: Andheri, Dist: B.S.D acquired for the construction of Telephone Exchange Building for Bombay Telephones now MTNL.

2. The notification came to be issued under Section 126 (4) of the Maharashtra Regional and Town Planning Act 1966 (MRTP ACT) read with Section 6 of the Land Acquisition Act, 1894 (LAR ACT). The notification is issued by the Commissioner Konkan Division on 26th June, 1987 and has been published in the Government Gazette, Konkan Division on 2nd July, 1987. Pursuant to the notification, compensation came to be paid to the claimants whose land was acquired under an Award dated 26th July, 1989. The special features of the suit land as shown in Clause 3 (c) of the Award are admitted. The plot is vacant agricultural land admeasuring 4754.30 Sq. Mtrs having frontage on 2 roads one being the main S.V. Road and the other being the 40 feet wide Patel estate road. Compensation for the plot is fixed at Rs.1400/- per sq. mtr. The claimants have been paid Rs.1.025 Crores. The FSI of 1 on the plot at the relevant time has been considered. The sale of the plot opposite the plot acquired on which a large commercial project was coming up at the relevant time

has also been considered. 4 instances quoted by the claimants have been separately considered for valuation. One of those plots was near to Andheri Railway Station and hence admitted not comparable. 2 other plots were undeveloped leases of which premium lease rent and cost of development could be charged which aspects have been considered to arrive at the value of compensation. A specific instance of plot on CTS No.219 which was very close to the acquired land has also been specifically considered. That plot has a factory which was being pulled down at the relevant time. The plot owner was allowed to construct a residential building on that plot with the approval of the Government. After making allowance for the factory structure the valuation of the acquired land was fixed. The claim for FSI in respect of a certain land acquired by the BMC was rejected but, which is not now being pursued as it could be claimed from the BMC which acquired the land. There is not much dispute with regard to other lesser aspects such as trees wells etc.

3. The SLAO as well as the claimants have led evidence before the Court Commissioner. The essential dispute between the parties is narrowed down to the consideration of one sale instance ultimately relied upon

by the claimant which is in respect of the property directly opposite the acquired land and which has been considered as instance no.3 in the Award itself.

4. The agreement for sale in respect of the plot at CTS No.219 is dated 28th April, 1986. The date of publication of the notification under Section 6 of the Land Acquisition Act in case of the acquired land is 2nd July, 1987. Hence, the instance quoted by the claimant is of a transaction 14 months prior to the concerned date. The evidence of the witness on behalf of the claimant who is the valuer one Mr. K.D. Vakharia shows that, that land is admeasuring 5601.83 sq. mtrs and has a factory building thereupon of the plinth area of 21795.73 sq. ft. (built up area), the total consideration payable in that case was Rs.77,25,000/- . The rate on which the transaction of sale took place on that land was therefore Rs.1379/- per sq. mtr. The acquired land makes out the rate of Rs.1400/- per sq. mtr. A rise of 12% p.a. for a period of 12 months is therefore, claimed by the claimants. This leads to an increase at the rate of Rs.193/- bringing the rate for the acquired land to Rs.1572/- per sq. mtr as on 2nd July, 1987.

5. The evidence of the valuer showing his calculation

for the rise in the price of the land appears to be justified.

6. As per the evidence of the valuer a further rise is to be calculated based upon the fact, the plot of CTS No.219 was an industrial plot and was purchased for residential user. The FSI on such industrial plot would be .5 as against the FSI on the residential plot which was 1 in 1987. In his opinion it would take more than a year and Rs.4,00,000/- to convert the land to residential user. He has therefore, claimed an interest of Rs.15% p.a on the blocked capital of Rs.77,25,000/- which was the consideration for the said plot. That would be at the rate of Rs.206 per sq. Mtr. The evidence of the witness on behalf of the SLAO who is also a valuer one Mr. Kurve shows at page 5 of his cross examination that there existed a policy of clearing of industrial units in the city area so that CTS No.219 was allowed to be used as residential property permitting FSI of 1 on the said plot. Consequently it can be seen that permission was to be applied for and obtained for the conversion of the user of the said plot. It would neither entail the cost of converting as per the opinion of the valuer of the claimants nor would entail blockage of capital for a period of one year necessitating an increase in the rate.

Both the plots would therefore have an FSI of 1 and would be identically placed in that regard.

7. Consequently the increase of Rs.216/- per sq. mtr as per his opinion evidence in clause 23(b) of his examination-in-chief and the increase of Rs.71/- per sq. mtr for the cost of converting do not seem to be correct.

8. Since the suit plot was an open agricultural land and the instant sale relied upon by the claimants had a structure of built up area of about 21000 sq. ft. the valuer on behalf of the claimant has opined in para 23(e) of his evidence that the cost of demolition of that structure was estimated at Rs.217950/- increasing the value by Rs.10/- per sq. ft. of the constructed area. Taking into account the cost of the material salvaged upon demolition, a downward allowance was made which would bring down the rate of the acquired land by Rs.39/- per sq. mtr. This calculation also stands to reason and can be accepted.

9. It is an admitted position that with regard to location frontage etc. both the plots were similar.

10. On behalf of the SLAO Mr. Rajguru has argued that

certain other minus points of the acquired land must also be born in mind and which would form a part of the evidence of the parties. The acquired land had several stables and on the date of the notification one stable remained thereat. The land was agricultural as reflected in 7x12 extracts and had to be converted to NA user. These facts are not disputed. The evidence by the claimants' valuer in paragraph 131 of his cross examination shows that there were proceedings under the Urban Land Ceiling Act in which he was the constituted attorney of the claimants and the acquired land had 11527.07 sq. mtrs of surplus vacant land. The order of the competent authority under the Urband Land Ceiling Land making the declaration of the surplus vacant land dated 8th April, 1985 has been produced on record as Exhibit-4 by consent of the parties. The order in appeal therefrom confirmed that order. A Writ Petition to set aside that order ordered the rehearing by the competent authority. The plot remained reserved and hence was in fact unbuildable by a private party. Further paragraphs 199 and 200 of the cross examination of the claimants Advocate shows that infrastructure required under the layout for the acquired land meant construction and maintenance of roads, water, sewerage, rain water disposal and street lights.

Construction of roads were not completed, garden was not built, drainage was partly completed and water supply was also partly complete. The lay out plan was required to be provided at the cost of the claimants.

11. It must be appreciated that the fact that the plot was reserved for the construction of the building of the Acquiring Body should make no difference to the valuation of the plot which must be considered on the basis that it was not reserved. No evidence is shown to be led on the aspect whether the surplus vacant land of the claimants could have been or has been utilized by the acquiring body. Even the infrastructure by way of construction of roads, gardens, sewerage system, rain water disposal etc. would be required had plot been developed for residential user by various Societies and not only for the construction of the telephone exchange building. Even the conversion of the plot from agricultural to N.A. user would not entail any further cost by the Acquiring Authorities since the plot has been reserved for that purpose. The fact that the stables were in existence would not undervalue the plot since upon acquisition, the stables must seize to exist.

12. In the result the valuation in the Award requires to

be modified to take into account the increase in the market value for 14 months as well as the decrease by way of the allowance made in the cost of the material salvaged upon the cost of the demolition of the factory structure on the land opposite the acquired land.

13. The arithmetical calculation of the rate of compensation as per sq. mtr of the acquired land taking into consideration the sale price of a private unreserved land opposite the suit plot would be as follows :

The rate of Rs.1379 per sq. mtr.
Plus
A rise of 12% p.a for 14 months
Bringing up the rate to Rs.1572 per sq. mtr.
Less
Allowances made for the cost of demolition of the factory premises in the plot considered by the parties at the rate of 39% per sq. mtr. Bringing down the rate of the acquired land to
Rs.1533/- per sq. mtr.

Hence, the claimants are entitled to the compensation at the rate of Rs.1533/- per sq. mtr of the acquired land. The amount of compensation payable to the Claimants

shall be worked out accordingly.

14. The SLAO shall despot in this Court the additional compensation within 8 weeks. Rest of the Award remains unchanged.

15. LAR disposed of accordingly.

(SMT. ROSHAN DALVI, J.)